Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CS Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	
	)	

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COMMENTS OF CONTINENTAL CABLEVISION, INC.

I. INTRODUCTION AND SUMMARY

Continental Cablevision, Inc ("Continental") is the third largest multiple cable system operator in the United States serving approximately 4.2 million customers in some 900 franchise areas. Continental is actively taking steps to become a facilities-based competitor to the incumbent local exchange carriers ("LECs") in the carriage of voice and data services in all of the regions in which Continental operates cable systems. For this reason, Continental has a strong interest in ensuring that the Commission's rulemaking is successful in reducing impediments to efficient market entry by new competitors.

Our comments will not attempt to address every issue raised in the Commission's Local Competition Rulemaking. Instead we will address certain priority issues critical to ensuring that the framework the FCC establishes for local telephony competition meets the Congressional goal of promoting facilities-based competition by Continental and other similarly situated competitors. On the broad range of issues implicated in this NPRM, Continental associates itself with the comments submitted by NCTA.

In these comments, Continental will describe the steps it has taken to date for entry into the competitive telecommunications field and focus on the basic competitive building blocks that the FCC must mandate if Continental and others are to have a reasonable chance of succeeding in becoming active competitors to incumbent LECs. Based upon specific experiences in the states, the comments stress the importance of a single set of explicit national rules to govern critical negotiations with incumbent LECs and the availability of essential elements.

If there is to be competitive telecommunications by Continental and other cable companies, the Commission must set clear national standards to guide the participants in negotiations and to delineate clearly the role of the states. Cable operators need endorsement of a facilities-based competitive model by the FCC if they are to have a realistic opportunity to compete not only in the handful of states that are on the forefront of competitive entry, but also in those states where a competitive landscape is further from reality. It was not the intent of Congress that Continental and other competitors be held hostage to drawn-out, unsuccessful negotiations that are really excuses for delay.

At the recent National Cable Television Association convention in Los Angeles, Vice President Gore urged cable to use its second wire to the home to provide telephony, and FCC Chairman Hundt asked cable to "give us real choice" in telephone services.[1/] Without

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[1/] See "Gore, Hundt Blow Cable Kisses," Multichannel News, May 6, 1995, at 6.

a successful conclusion to this docket, however, cable will not be able to respond to these calls. If the priority issues in this docket are not resolved as outlined herein, then the common goal of Congress, the Administration, and the FCC to stimulate cable companies to compete against incumbent LECs will be stillborn.

FCC officials have urged the cable industry and other existing and potential LEC competitors to come forward with their individual priority lists for successful competitive entry. Continental submits its priorities without intending to displace or diminish the far more comprehensive analysis of the issues in this proceeding provided by the National Cable Television Association. Continental has, however, selected for comment those issues on which, based on the experience of its managers that are tasked with leading Continental's entry into telephony, decisive and specific Commission action is most needed.

Continental's priority list is as follows:

The "Top 8" priority items are:

1) The FCC should endorse "bill and keep" mutual compensation arrangements;

2) Competitors should not be required to mirror LEC calling areas for "bill and keep" or other termination compensation arrangements;

3) Clear national rules, not simply "preferred outcomes," are essential to fruitful interconnection negotiation;

4) The FCC should preempt the ability of the states to impose incumbent LEC obligations on new competitive entrants;

5) LEC compliance with access to network elements should be based on a "performance standard" that assures that competitors are adequately serviced so as not to impede competition;

6) The standard for a "technically feasible point" for interconnection should be an evolving one;

7) Resale discounts should be kept to a minimum to encourage facilities-based competition; and

8) Reasonable limits should be placed on LEC information requests from new entrants.

This list, while not exhaustive, will provide a meaningful framework for interconnection negotiations between Continental and incumbent LECs in the states in which Continental intends to provide competitive telephone service. It is part of a comprehensive, pro-competitive framework that is essential to foster competition in local telecommunications markets.

II. Continental Intends to Compete Actively With Incumbent LECs If FCC Rules Reinforce the Viability of Local Completion.

Today's constellation of new federal law, economically viable technology, and market demand for choice uniquely positions Continental to fulfill the vision and policy of the Telecommunications Act of 1996. Continental began, and over the past two years has accelerated, a regime of investment in its broadband network. This investment expands the capability and reliability of the cable television network, and it enables Continental to provide voice and data services as well. In these upgraded areas. Continental has the near term potential and business plan to serve the mass residential market as a facilities based provider of communications services.

Continental has already undertaken numerous initiatives in telephony. In most of its operating regions, Continental either has purchased, or has ordered, Lucent Technologies Class 5 ESS switches that will provide the anchors for its offering of switched services. Each region is also engaged in other efforts to prepare to compete vigorously for local telecommunications business In each of these five regions, clear federal rules that create incentives for efficient entry will permit these business plans to be successfully implemented.

A. Northeast

Continental plans to provide switched voice services in the Northeast by the end of 1996 utilizing its fiber backbone facilities, which constitute the largest regional fiber optic network in the cable industr Presently, Continental's fiber backbone covers Massachusetts, New Hampshire, and portions of Connecticut. A Class 5 ESS switch will be in place by June in Chelmsford, Massachusetts. Continental also has a local facilities leasing and revenue sharing agreement with Teleport Communications Group ("TCG"), which rides Continental's fiber backbone and uses Continental for the final fiber link to customer locations.

Just last week, Continental subsidiary CCI Telecom of New Hampshire received certification from the New Hampshire Public Utilities Commission ("PUC") to be a telecommunications provider.[2] The New Hampshire PUC's approval allows CCI to offer telephone and data through its fiber-coaxial network, which already links, using high speed data transmission, Exeter Health Resources Center with satellite physician and rehabilitation offices. Continental's service permits physicians to send and receive from their offices patient records and other information at speeds 500-700 times as fast as conventional dial-up telephone lines.

In other areas of the Northeast, Continental has been constructing private data networks including LAN to LAN connections and campus LANs. As Continental detailed in its comments in the FCC's docket on the Federal State Joint Board on Universal Service,[3] it has also installed a broadband communications network at Boston College providing video and high speed data services, including full access to library resources and the Internet, to dormitory rooms, classrooms and offices across the campus.

B. Midwest

To date, Continental has focused its competitive local telephony efforts in the Midwest primarily on Michigan, in part because of the favorable regulatory environment for new entrants. Continental filed an application to provide local exchange services in Michigan on May 9, 1996. Approval is expected by Fall 1996. Continental expects to begin

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[2] Minutes of the NHPUC Open Meeting, 5/6/96, Item 22, DR 96-010 CCI Telecommunications of New Hampshire, Inc.

[3] See Comments of Continental Cablevision, Inc., CC Docket No. 96-45, filed April 12, 1996, at 10-11.

providing telephone service in 1996 primarily as a reseller and then to commence operations as a full facilities-based provider in the first half of 1997

To prepare for telephone operations, Continental has underway a complete rebuild of its Michigan network. This rebuild employs a hybrid fiber/coaxial cable ("HFC") design and a SONET ring architecture, will be completed by the end of 1997. Continental also expects to install a Class 5 ESS switch by year end 1996.

Continental is also a 15% owner of TCG Detroit, which provides competitive access, special access and licensed local exchange services in metropolitan Detroit.

C. **Central**

Continental has focused its competitive telephony efforts in this region on Illinois, which also has a favorable regulatory environment. In the Chicago area, Continental has conducted an extensive HFC plant technical test and a joint marketing trial in cooperation with AT&T. We expect certification for our Chicago telecommunications affiliate as a facilities-based provider as well as a reseller of local switched services this year.

D. **Southeast**

In Florida, Continental has formed a wholly owned subsidiary, Continental Florida Telecommunications, Inc. (CFT) that was granted authority by the Florida Public Service Commission in early 1996 to operate as an alternative local exchange carrier ("ALEC") on a statewide basis.[4/] One Class 5 ESS switch is currently operating in Jacksonville and another

[4/] Florida Public Service Commission Order No. PSC-96-0293-FOF-TX, issued February 27, 1996, in Docket No. 951346-TX (effective date: March 20, 1996).

has been ordered for Pompano. CFT's marketing focus is on residential customers in the Jacksonville, Pompano, Hialeah and Naples areas.

Continental formed a Virginia subsidiary similar to CFT in 1996 that will shortly seek authority to operate as a new entrant pursuant to statutory changes enacted in Virginia last year.[5] The initial focus of the marketing efforts of this subsidiary will be to furnish switched local telephone service to residential customers in competition with Bell Atlantic in the Richmond area. A Class 5 ESS switch has been ordered for Richmond.

In addition, Continental is engaged in two separate joint ventures in Florida and Virginia with Hyperion Telecommunications, a subsidiary of Adelphia Communications Corp., to market competitive access services (special access and private line) in Jacksonville and Richmond under the "Alternet" name. Florida state law was revised in 1995 to authorize electing competitive access providers to become ALECs.[6] Alternet - FL made that election in 1995 and is authorized to furnish local switched service in competition with BellSouth.[7] Alternet - VA, the competitive local service entry in Virginia, will seek authority in 1996 to operate as a "new entrant," furnishing local telephone service in competition with the incumbent LECs.

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[5] Virginia Code Sections 56-265.4:4.C and 56-481.2.

[6] Chapter 95-403, Laws of Florida.

[7] AlterNet-FL submitted its notice to the Florida Public Service Commission on August 4, 1995, pursuant to Section 364.337(6)(b), Florida Statutes (1995).

The focus of Alternet's marketing in both Florida and Virginia will continue to be business customers. Both Alternet-FL and Alternet-VA have entered into joint ventures with !Nterprise, a U S WEST subsidiary, under which they offer data communication services such as frame relay and data networking to business customers in Jacksonville and Richmond.

E. **Western**

Continental Telecommunications of California (CTC) applied for certification as competitive local exchange carrier in September 1995, and was granted a certificate by the California PUC in December 1995.[8/] In March, 1996, CTC received authority to resell the services of Pacific Bell and GTE California within ten California counties.[9/] A Class 5 ESS switch is being installed. Continental's focus will be expanded as network and switching upgrades proceed to providing basic residential service in existing franchise areas.

CTC is engaged in negotiating interim interconnection agreements with major LECs in Continental's California franchise areas. Following consummation of these interim arrangements, more extensive negotiations will be initiated this summer focusing on the duties imposed on the LECs pursuant to the 1996 Telecommunications Act.

[8/] D.95-12-057, California Public Utilities Commission, December 20, 1995.

[9/] D. 96-03-020, California Public Utilities Commission, March 13, 1996.

III. The FCC Must Adopt Certain Basic Rules Governing Competition At the State Level

A. Continental's "Top 8" Priorities for Effective Interconnection Agreements

1. Bill and Keep Should be Adopted as Both an Interim and Long Range Solution to Mutual Compensation Requirements.

Continental believes that a simple "bill and keep" compensation mechanism for the exchange of local telephone traffic between Continental and incumbent LECs will best foster competition and promote the goals of the 1996 Act. As noted by the FCC in its NPRM,[10/] the Regional Bell Operating Companies have used this system among themselves over an extensive period of time for terminating local traffic between adjacent LEC exchanges.

The wide diversity of traffic termination charges in various states underscores the rationality of using a bill and keep mechanism. In Massachusetts, for example, under interim arrangements, NYNEX charges 1.5 cents per local call[11/] and under NYNEX's switched access tariff NYNEX charges 3.9 cents for toll calls.[12/] In Michigan, the rate for terminating local traffic is 1.5 cents per call and termination of toll traffic is based on access

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[10/] NPRM at ¶ 243.

[11/] Interim Co-Carrier Agreements, on file with the MA DPU; See also, Investigation by the Department on its own Motion into IntraLATA and Local Exchange Competition in Massachusetts, D.P.U. 94-185.

[12/] In re: New England Telephone, D.P.U. 94-50, Amended Compliance Filing, 5/10/96.

charges of about 2.5 cents.[13/] There is no indication that any of these charges are rationally or economically related to the actual costs of terminating different types of telephone traffic.

Moreover, requiring Continental to measure the value of exchanged traffic would impose burdensome costs. Continental's limited capital would be better spent in upgrading its competitive facilities. In most cases, the administrative expenses to bill a minute of use would cost more than the revenues exchanged. As the FCC noted,[14/] bill and keep can produce numerous benefits that Continental believes will promote sound public policies.

The interpretation proffered by some LECs that bill and keep can only be adopted if an incumbent LEC consents to it would give LECs the ability to create a significant barrier to Continental's entry into the telecommunications market. The FCC is fully justified in maintaining that it has the statutory authority to authorize states to impose bill and keep arrangements, as well as to impose bill and keep arrangements in cases brought before it.[15/]

[13/] Local termination is bill and keep if traffic is plus or minus 5% in balance; if traffic is more than 5% out of balance, all local traffic is compensated at $.015/minute. Re: Application of City Signal, Case No. U-10647, Opinion and Order, February 23, 1995.

[14/] NPRM at ¶¶ 226-244.

[15/] Id. at ¶¶ 117-120. Contrary to LEC arguments, Section 252(b)(2)(B)(i) does not limit bill and keep to the situation where LECs waive their right to some other form of compensation. Rather, that provision clarifies that regulators are not precluded from imposing or approving "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements)." The legislative history demonstrates that this subsection was intended solely to clarify that the Act's mutual compensation mandate could be implemented by use of "a range of compensation schemes, such as an in-kind exchange of traffic without cash payment (known as bill and keep arrangements)." 1996 Act Conference Report at 20.

2. Competitors Should Be Able to Design Local Calling Areas That Mirror Their Existing And Planned Networks

Closely related to the "bill and keep" issue is the issue of whether competitors like Continental can define their own local calling areas congruent with their existing or planned networks. The current termination charge differential between a local and a long distance toll call in many cases is not cost-based. There is no sound economic or technical reason why a cable competitor such as Continental with a large regional fiber network in the Northeast should not be able to adopt a wider calling area for its "local" traffic than does NYNEX. The potential benefits for consumer choice that Continental could bring to the marketplace can and will be denied if the FCC defers absolutely to historic anomalies that have created systems of subsidies for RBOC pricing. Current interconnection pricing, specifically pricing for local terminating access, constitutes a significant cost barrier to entry and manipulates, in an anticompetitive manner, the design and structure of the services Continental can bring the residential market.

Not only should Continental be able to define an entire LATA as a local calling area and negotiate LATA-wide bill and keep arrangements, such flexibility is an essential element of meeting competition in metropolitan areas where LECs are beginning to adopt single flat rates for wide area calling plans. Even where the distances between LEC exchanges in local calling areas are very small and Continental attempts to offer an expanded local calling area for a flat monthly charge, it must still pay the much higher traffic termination rates for traffic that would be "toll" under the incumbent LEC's pricing structure. In many instances, this makes it uneconomic for Continental to offer customers the choice of an expanded calling area.

Because the LEC chooses to define its local markets narrowly is no basis for permitting it to charge extra toll access charges to competitors outside these markets and thereby hinder the development of facilities-based competition. The FCC should acknowledge in its decisions the differences in the historical development of the cable television and the telephone networks. The existing telephone network is based on engineering designs and plant constructed up to 50 years ago. In many towns, the LEC infrastructure consists of three or four central serving areas with lower capacity switches because distance was then a far greater factor in network design than today. Thus, LEC local calling areas and toll access charges are often based on irrational and outdated boundaries.

Conversely, cable television is able to design its network and service areas to serve modern community interests. Cable networks optimize traffic flows based on current population rather than outmoded population and engineering parameters. If Continental is required to deploy its telephone networks in an identical manner to those of the LEC incumbents, facilities-based local competition will be impeded to no valid end.

The solution to this problem is to charge the same rate (or to minimize the rate differential) for terminating local and toll traffic under interconnection arrangements. The smaller the differential, the better Continental will be able to absorb that differential and offer a flat rate for an extended local calling area that mirrors its more recently constructed

HFC network. For the FCC to allow a call's local or toll nature to be determined based on the incumbent LEC's exchange boundaries would create a significant barrier to new entrants.

Nor is this a merely a hypothetical issue. The high differential in termination rates is a major barrier to entry for Continental in the eastern Massachusetts residential market. In January 1995 the Massachusetts Department of Public Utilities initiated a docket to consider local and intraLATA competition.[16/] Pending resolution of the case, the incumbent LEC, NYNEX, entered into interim co-carrier agreements with several providers. These publicly filed arrangements provide for local terminating access at an average rate of 1.5 cents per minute. The rate applies to calls within the local calling area as defined by the NYNEX tariff.[17/] IntraLATA minutes beyond that local calling area are charged at the intraLATA Feature Group D rates in NYNEX's switched access tariff. While the tariffed local calling areas in the greater metropolitan Boston area (i.e., inside Route 128) are relatively large, calling areas outside the city are small, generally limited to the home exchange plus contiguous exchanges.

After fourteen months of litigation, the Massachusetts DPU has recently decided, following passage of the 1996 Act, not to issue an order on any interconnection issue that the FCC is addressing in this docket. It will now defer to the FCC on all generic interconnection and unbundling issues. As a consequence of this decision, high

[16/] Investigation by the Department on its own Motion into IntraLATA and Local Exchange Competition in Massachusetts, D.P.U. 94-185, Order 1/6/95.

[17/] D.P.U. - Mass. No. 10, Section 5.

interconnection pricing remains in place until individual arbitration cases are resolved for the benefit of the arbitrating parties.

The following example demonstrates how the cost of local terminating access alone is a barrier to entry by Continental in the eastern Massachusetts residence market. Assume for this example that Continental is able to achieve a five percent residential market share in its first year, and that traffic mirrors market share. Assume that a household uses its telephone for 30 minutes of local calling per day, or 15 hours per month. In this conservative example, Continental will carry 900 minutes of local usage per month and will pay to NYNEX $12.83 per customer per month (900 x .015 x .95) in local terminating access charges alone. If the household members use the telephone for local calling two hours per day, terminating access charges rise to $51.30 per month.

As a further example consider the household with a telecommuter, an America Online user, or a high school student. The terminating access price per month for such a customer with four hours per day of local usage rises to $102.60 per month.

These prices present an absolute barrier to entry. When considered in the context of other RBOC imposed costs, for instance the NYNEX price of $2.00 per month for residence interim number portability, it is fundamentally impossible for Continental, or any other competitor, to enter this market.

Continental stresses that it is seeking these compensation rules for interconnected LECs only. Consequently, it is not seeking to affect the LEC access charge system governing traffic exchanges with interexchange carriers. Thus, to the extent the Commission may be concerned that if bill and keep is applied to toll traffic, users could work out arbitrage arrangements for interexchange carriers, such arrangements could be specifically prohibited and bill and keep mechanisms restricted to LEC-to-LEC traffic.

3. Clear National Rules Are Better Than "Preferred Outcomes"

The FCC should address all of the checklist elements and adopt strict, precise rules to enforce them. Some states, notably California, have stated these as "preferred outcomes."[18] While the California experience with 'preferred outcomes' provides an encouraging sign that a negotiation framework is helpful, explicit national guidelines represent a more straightforward approach for ensuring that facilities-based competition proceeds expeditiously.

As the Commission noted in its NPRM, explicit national rules will (1) allow Continental to configure its networks in the same manner in each market it seeks to enter, thereby reducing the cost of competitive entry, (2) enhance the ability of the investment community to assess Continental's business plan, making more capital available to carry out that plan and (3) narrow the range of permissible results in interconnection and unbundling negotiations with incumbent LECs, leading to more rapid deployment of competitive networks.[19] The latter point is particularly important. Time delays always protect the market share of the incumbent.

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[18] Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Docket No. R95-04-043, D95-12-056 (rel. Dec. 20, 1995).

[19] NPRM at ¶¶ 30, 31.

4. The FCC Should Make Clear to States That They Cannot Impose Incumbent LEC Obligations On Competitors

While the legislation would appear to be quite clear on this point, some states in which Continental operates are proposing to treat all LECs the same, incumbent and newcomers alike. New Hampshire, for example, had proposed initial draft rules for local competition that do not distinguish between incumbent LECs and competitive entrants, applying all Section 251(c) obligations with respect to unbundling, interconnection, resale and pricing to Continental and other similar situated competitive carriers.[20/] In Connecticut, as well, the DPUC has opened a proceeding looking to impose unbundling and resale requirements on new entrants.[21/]

If states are permitted to impose obligations of incumbent LECs on new entrants, then the 1996 Act provisions with respect to local competition have no power or meaning. Individual states can harm the core national policy favoring local telecommunications competition by imposing costly and unnecessary obligations. Federal policy should encourage an environment where new entrants can dedicate investment and resources to the provision of new choices to consumers, not to the provision of new network elements to other providers.

[20/] NH Admin Rule DUC 1300, Local Competition Rules, Draft 4/22/96. (A second draft of these rules are to be made available on the date these comments are filed with the FCC, and may contain changes.)

[21/] Conn. DPUC Investigation into Participative Architecture Issues, Docket No. 94-10-04, Statement of the Scope of the Proceeding (adopted March 5, 1996), at 2.

The differences in obligations between incumbents and new entrants can and will change under federal law as new entrants take on the characteristics of incumbents. Under Section 252(h)(2) of the 1996 Act, a company like Continental may be required to accept the obligations of an incumbent, but only if it has achieved market position similar to the incumbent, has substantially replaced the incumbent, and such a result would be consistent with the public good. The federal law thus contains an inherently fair view not only of entry, but of long term shifts in telecommunications markets. States should not be permitted to disturb the overall balance of the 1996 Act.

Congress explicitly restricted the obligations of non-incumbent LECs to minimum conditions to ensure the efficient interrelationship of the nation's telecommunications networks. Competitive entrants like Continental have no obligation to unbundle their facilities and have far more limited interconnection and resale obligations. Section 251(b) establishes only a limited set of duties on all local exchange carriers, including new entrants. The duties of incumbent LECs pursuant to Section 251(c) are for more expansive.

Congress specifically stated that "saddling the full weight" of the requirements imposed on incumbent LECs on new competitors such as Continental would "discourage [them] from entering the market."[22] The FCC should make clear to the states that any misguided attempts to create a supposed "level playing field" by imposing equal obligations on new competitors as incumbent LECs will in fact create extreme imbalance in the market and will be preempted.

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[22] Senate Report at 74

5. Access to Networks Elements Should Be Based on a "Performance Standard" Rather Than on a Static Detailed List

The FCC should identify a basic set of network elements to be provided by LECs to competitors. This list should be revised as necessary over time. No minimum set of unbundling network elements can keep up with the dynamic nature of the telecommunications marketplace.

Performance standards for meeting deadlines and filling orders for network elements are critical to making such an evolving list work. The RBOCs have been notorious for slow delivery of elements requested by competitors in the past.

The most basic building blocks needed by Continental from incumbent LECs are the databases and associated signalling necessary for call routing and completion, as well as access to 911 and directory and operator assistance. These are under Bellcore administration. There is at present a 45-day delay for Continental to obtain a signalling code.

At the next level, the Commission must ensure that transport functions will not be overly bundled so that competitors can obtain only the functionalities they need. While on the whole, Continental intends to construct its own network elements, what is needed at this juncture is a general, flexible standard that requires the incumbent LEC to provide such elements as are needed by competitors to perform effectively so that robust competition can flourish as rapidly as possible.

Most importantly, the FCC must hold the incumbent LECs to a strict standard of commercial reasonableness in terms of deadlines for providing ports or other network elements. Continental has found that LEC dilatory practices can be subtle. The LEC may state, for instance, that it needs to order a "feasibility study" for such a standard item as Centrex or a T-1. Michigan, for example, has taken a hard line on sanctions, providing for potential fines of up to $20,000 per day and recovery of economic loss for violation of the obligation to provide nondiscriminatory access to network elements and other statutory requirements.[23] The FCC should be no less stringent in its oversight of this area.

6. The "Technically Feasible Point" For Interconnection Should Be An Evolving Standard

In the 1996 Act, Congress specified that interconnection must be at points that are "technically feasible".[24] In promulgating regulations on this aspect of the statute, the FCC should place the burden of proof on the incumbent LEC to demonstrate that any interconnection arrangement proposed by a competitive carrier such as Continental is not technically feasible. The Act, in an earlier version, also included the phrase "economically reasonable." This test, however, was eliminated from the Act's final version. The FCC should not read back in what was explicitly removed by Congress.

Continental has experienced reticence on the part of incumbent LECs to provide interconnection other than at their central offices and tandem switches. In many cases, it

[23] Section 601 of Michigan Telecommunications Act, MCL 484.2601.

[24] Section 251(c)(2)(B

makes no sense for Continental to carry its facilities all the way to where the incumbent LEC has chosen to put its central office if there is no technical barrier to such deployment. If the LEC trunk runs past Continental's switch, Continental should be able to meet the LEC's network in the manhole. The LECs want to price interconnection differently at different points on the network without any economic rationale. Sound engineering practices should drive interconnection points. Pricing should not.

Rather than offer interconnection at a "midspan" meet point, the LECs apparently prefer virtual or physical collocation at switches, despite the technical feasibility of providing other points of entry. The FCC should make clear that it will enforce vigorously the "technically feasible" standard, with the burden of proof on the LECs to demonstrate technical infeasibility. Past points of interconnection offered by LECs to other LECs are by definition "technically feasible," although this should be the starting point, not the end point, for identification of which interconnection points are at any time "technically feasible."

Consequently, the FCC should explicitly recognize that "technical feasibility" is an evolving standard that will change as technological advances are made. The FCC should not fix in stone the parameters of what is technically feasible today. Instead it should require the incumbent LECs to provide interconnection at points that are consistent with current network technological evolution.

7. Resale Should Be Implemented by the FCC Based on the 1996 Act's Goal of Encouraging Facilities-Based Competition

Any incentives the FCC provides to telecommunications companies to forego investment in competitive facilities will be contrary to the Congressional vision of a telecommunications world based on at least two-wire, and potentially multiple-wire, competition. Under Section 271(c) of the 1996 Act, an RBOC must demonstrate that it is providing access and interconnection to a facilities-based competitor, not a reseller, in order to enter the long distance market. Resale is seen by Congress as only an interim step.[25/]

This is consistent with the Commission's own long-standing position that facilities based competition provides the greatest potential for consumer benefits.[26/] Chairman Hundt, in discussing a predecessor bill to the 1996 Act, stated that "what we need here is legislation that establishes fair rules of two-wire competition."[27/] Such two-wire competition will not emerge if the incentives for non-facilities-based resale are too great.

To the extent resale is allowed, incumbent LECs should not be able to discriminate in resale prices as between a LEC affiliate and non-affiliated entities. Nor should the LECs be able to discount resale services in a manner that would create a disincentive for true,

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[25/] See Conference Report at 148.

[26/] See e.g., In the Matter of Petitions for Rule Making Concerning the Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 FCC Rcd 4006, 4008, ¶ 14 (1992); In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2954, ¶ 156 (1989).

[27/] Broadcasting and Cable Interface Conference, October 4, 1994.